

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

FILED  
U.S. DISTRICT COURT  
AUGUSTA DIV.

2016 SEP 21 P 4: 14

UNITED STATES OF AMERICA

v.

SHAWN HAMILTON

\*  
\*  
\*  
\*  
\*

CLERK J. Burton  
SO. DIST. OF GA.

CR 407-122

---

O R D E R

---

On February 11, 2008, Defendant Shawn Hamilton was sentenced upon his plea of guilty to three separate counts: (1) possession with intent to distribute 5 grams or more of cocaine base and 3,4-methylenedioxymethamphetamine (Ecstasy); (2) possession of a firearm by a convicted felon; and (3) use and carry of a firearm during a drug trafficking crime. Defendant was sentenced to serve a total term of imprisonment of 157 months.

Presently, Defendant has filed a motion to reduce his sentence under 18 U.S.C. § 3582(c)(2) based upon Amendment 794 to the United States Sentencing Guidelines. Amendment 794 sets out new guidelines for the determination of whether a defendant should be granted a mitigating role reduction under U.S.S.G. § 3B1.2.

Section 3582(c)(2) allows a court to modify an imposed term of imprisonment if a defendant's sentencing range has

been subsequently lowered by the Sentencing Commission. However, this provision is only triggered by an amendment listed in U.S.S.G. § 1B1.10(d). ("In determining whether, and to what extent, a reduction in the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) . . . is warranted, . . . the court shall substitute only the amendments listed in subsection (d) . . . and shall leave all other guideline application decisions unaffected" (emphasis added).). Amendment 794 is not a listed amendment in U.S.S.G. § 1B1.10(d).<sup>1</sup> Consequently, even assuming Defendant's conduct would otherwise qualify him for a "minor role" reduction, Amendment 794 is not available to him retroactively in the post-conviction context.

Upon the foregoing, Defendant's motion to reduce sentence (doc. no. 159) is **DENIED**. His motion to appoint counsel is **DENIED AS MOOT**.

ORDER ENTERED at Augusta, Georgia, this 21<sup>st</sup> day of September, 2016.

  
UNITED STATES DISTRICT JUDGE

---

<sup>1</sup> Indeed, the Sentencing Commission stated that Amendment 794 is intended only as a clarifying amendment. U.S.S.G. App. C, Amend. 794 (Reason for Amend.) ("This amendment provides additional guidance to sentencing courts in determining whether a mitigating role adjustment applies.").